



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

**77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590**

NOV 12 2009

REPLY TO THE ATTENTION OF:

AR-18J

G. Vinson Hellwig, Director
Air Quality Division
Michigan Department of Environmental Quality
525 West Allegan Street
P.O. Box 30260
Lansing, Michigan 48909-7760

Dear Mr. Hellwig:

We are in receipt of your June 18, 2009, and September 17, 2009, letters regarding Michigan Department of Environmental Quality (MDEQ)'s process for evaluating the Michigan Iron Nugget LLC, Permit Application (Application No. 386-08). These letters were sent in relation to concerns raised by the Forest County Potawatomi Community (FCPC, the Tribe) regarding potential impacts to the Tribe's Class I area under the Clean Air Act's (CAA) Prevention of Significant Deterioration (PSD) program. Your letters also requested information about the appropriate contact for the FCPC Class I area, specifically in light of the 7th Circuit's recent decision upholding U. S. Environmental Protection Agency's redesignation to Class I of certain FCPC reservation lands. While we previously addressed some of these questions in our October 22, 2008, response to your letter of July 20, 2008, we are providing additional clarification today.

Under the PSD program, owners and operators of major sources and sources for which major modifications are made must include modeling of projected air quality impacts as part of their permit application. This modeling would include impacts on Class I areas. See 42 U.S.C. 7475(a)(1)(3); 40 C.F.R. 52.21(p)(1).

The Michigan Iron Nugget facility is adjacent or nearby to a number of Federal Class I areas besides the FCPC Class I area. We understand that in addition to the comments you have received from FCPC on potential concerns regarding this source, you are also in receipt of a letter dated May 5, 2009, from the U.S. Department of Interior, Fish and Wildlife Service, raising similar concerns and identifying several potentially impacted Class I areas. The Department of Interior letter of May 5, 2009, specifically requests an analysis of the source's potential impact on visibility, an analysis of sulfur and nitrogen deposition, a Class I increment analysis, and the opportunity to review the Class I modeling protocol. These concerns are shared in FCPC's letter to MDEQ of May 21, 2009.

In regard to the September 9, 2009, decision upholding EPA's redesignation rulemaking for the FCPC Class I area, which you referenced in your letter of September 17, 2009, you note that the Court opined that EPA would serve as the Federal Land Manager (FLM) for the redesignated area. Please be aware that EPA is still evaluating the decision and cannot concur at this time with your conclusion that EPA is the FLM for the FCPC Class I area. In the meantime, EPA does not believe it is necessary to designate an FLM for the FCPC Class I area in relation to the ongoing Michigan Iron Nugget permit – or any other permit – at this time.

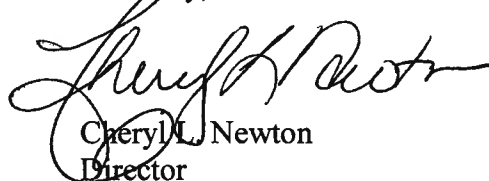
On September 14, 2009, representatives of EPA, MDEQ, the Michigan Attorney General's Office, FCPC, Michigan Iron Nugget, Barr Engineering, and the FLM for the Seney National Wilderness Area held a conference call to discuss a communications protocol regarding exchanging information necessary for addressing Class I area-related concerns in the Michigan Iron Nugget permitting process. During that call, the participants agreed that the Tribe would directly communicate any concerns relating to consideration of its Class I area with MDEQ, Michigan Iron Nugget, and EPA. See Attachment 1, email from Teresa Kinder, Barr Engineering, to Natalene Cummings, FCPC, et al., September 16, 2009.

If you have any questions about this process, we recommend that you consult Section 165 of the CAA, 42 U.S.C. 7475, and 40 C.F.R. 52.21(p), as well as the April 29, 2008 final rule titled: "Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Redesignation of the Forest County Potawatomi Community Reservation to a PSD Class I Area" (73 FR 23086).

We strongly support the parties' efforts to address with FCPC all comments and/or concerns related to this permit application. If any issues for resolution arise, Section 164(e) of the CAA and 40 CFR 52.21(t) provides the current statutory and regulatory framework for resolving disputes between States and Tribes arising from the redesignation of an area.

If you have any further questions, please feel free to contact me or Constantine Blathras, of my staff, at (312) 886-0671.

Sincerely,



Cheryl L. Newton
Director

Air and Radiation Division